

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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In the Matter of )

)  
 Replacement of Part 90 by )  
 Part 88 to Revise the Private )  
 Land Mobile Radio Services )  
 and Modify the Policies )  
 Governing Them )

and )

PR Docket No. 92-235

)  
 Examination of Exclusivity )  
 and Frequency Assignment )  
 Policies of the Private )  
 Land Mobile Radio Services )

TO: The Commission

**REPLY COMMENTS OF**  
**MANUFACTURERS RADIO FREQUENCY ADVISORY COMMITTEE, Inc.**

Manufacturers Radio Frequency Advisory Committee, Inc.  
 ("MRFAC"), by its counsel, hereby submits its reply comments on the  
Further Notice of Proposed Rulemaking (the "Further Notice"; FCC 95-  
 255, released June 23, 1995) in this proceeding.

**INTRODUCTION**

In its opening comments, MRFAC set forth its position on  
 the various issues involved in narrowband conversion. In these reply  
 comments, MRFAC responds to certain proposals made in the opening  
 comments of other parties which MRFAC believes would result in a less

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effective regulatory regime for the conversion to narrowband. The areas involved are (1) user fees, (2) resale, (3) use of newly-created channels, (4) exclusivity, and (5) the scope of mandatory conversion. MRFAC also takes this opportunity to comment briefly on certain of the proposed plans for consolidation.

### DISCUSSION

#### I. User Fees

While certain parties expressed support for user fees (UTC Comments at 26; Motorola Comments at 3), MRFAC continues to believe that the imposition of user fees upon existing licensees would be both inequitable and ineffective.

Existing licensees already shoulder their fair share of the costs of regulation through the payment of application fees and annual regulatory fees. To impose additional costs would be tantamount to taxation and would directly undermine current efforts to reduce the federal government's share of the gross domestic product.

It is also very likely that user fees would be counter-productive. Any user fees high enough to encourage more efficient spectrum use and reduce spectrum congestion could easily induce would-be users to avoid licensing entirely.

Even if user fees are imposed, there is simply no justification for UTC's proposal to exempt oil companies and railroads, for example, from the payment of such fees. UTC Comments at 26. These companies are among the largest and most heavily capitalized

in the country. It would be highly inequitable to force small, entrepreneurial companies to bear the bulk of the regulatory costs while major corporations such as those suggested by UTC are exempted.

For these reasons, and assuming the Commission will in fact be authorized to levy user fees, MRFAC urges the Commission to institute user fees only in connection with the allocation of additional PLMRS spectrum and, specifically, in connection with the licensing of that spectrum.

## II. Resale

UTC proposes that licensees be allowed to resell unused spectrum for profit. UTC Comments at 18-19; see also Ericsson at 5. Under UTC's proposal, resale would be available only to licensees meeting loading requirements based on their internal needs (not the needs of a third party), and these licensees could only resell to eligibles in their own pool. MRFAC, as well as many of the other parties submitting comments, believes that resale should not be permitted. Should the Commission choose to permit resale, however, MRFAC urges it not to adopt UTC's proposal which MRFAC believes is unworkable.

As an initial matter, the Commission does not have the resources, particularly in this time of budgetary restraint, to police resale agreements for conformity with whatever regulatory structure might ultimately be established. As a result, a commercial provider in the Business Radio Service could very easily establish its

"eligibility" for resale in its pool and then effectively remove the subject frequency from the private radio inventory.

Furthermore, the unavoidable result of resale would be an interlocking relationship between private and commercial systems. Such a result would make it difficult to classify a particular licensee as CMRS or PMRS and would also raise questions as to whether such frequencies should be auctioned.

The comments of other interested parties indicate that MRFAC's concerns are well-founded. American Mobile Telecommunications Association, Inc. ("AMTA"), makes reference to the Commission "provid[ing] prospective commercial providers with adequate regulatory tools to clear sufficient spectrum in a reasonable timeframe." AMTA Comments at iii, 6, 9. AMTA does not suggest what form those "tools" might take, but it makes perfectly clear that it envisions re-creating an 800 and 900 MHz scenario in bands traditionally reserved for the internal needs of business and industry. Furthermore, for the reasons discussed in MRFAC's opening comments at 9-10, AMTA's homogenized, carrier solution for these specialized needs is inadequate.

### III. Use Of New Channels

Users subject to mandatory conversion, as well as voluntary converters, should be permitted to retain the new channel generated by their investment. Nippon Telegraph and Telephone Company ("NTT") also supports this position, suggesting in its opening comments that users undergoing narrowband conversion be able to retain the value of the channels they create. NTT Comments at 4-6. The Association

of Public-Safety Communications Officials-International, Inc. ("APCO"), on the other hand, proposes that the Commission reserve the additional channels created by narrowband conversion for use by public safety agencies. APCO Comments at 7.

While MRFAC agrees that public safety agencies should receive favorable treatment under the regulatory structure to be adopted by the Commission, APCO's proposal goes too far. To commandeer additional channels created by private investment for the use of government agencies would represent government overreaching at its worst and would force licensees to bear a cost that should be spread across the public as a whole. If the promotion of public safety requires APCO to have access to additional channels, it should obtain them through the same process as other entities and not simply appropriate the benefit of private investment.

#### IV. Exclusivity

MRFAC supports certain limitations on the grant exclusivity, such as restricting it to users with unique operational or safety needs or those who have realized specified loading levels; of course co-channel licensees must also agree. The American Petroleum Institute ("API") takes a broader approach and suggests that exclusivity agreements should only be accommodated "between similar energy industry users." API Comments at 8. MRFAC opposes such a restriction.

Assuming the Commission ultimately requires consolidation (see Section VI), the restriction of exclusivity within a pool to eligibles from the same, superceded Radio Service would contradict

the very idea of consolidation. This is particularly true given that the Petroleum Radio Service shares frequencies with a number of other services. In practical terms, API's proposal discourages exclusivity agreements by making it more difficult for users in one Service to enter into such agreements with users in another Service, even when those other users are on the same channel in the same area.

V. Scope of Mandatory Conversion

Mandatory narrowband conversion should be limited to "frequency-congested" markets such as major metropolitan areas. Others parties agree with this position. Motorola, for example, stated that it would be "most fair" to limit mandatory conversion to users in "frequency deficient areas or, alternatively, in the top markets...." Motorola Comments at n. 8.

UTC also supports provisions limiting mandatory conversion in this manner, but proposes that mandatory conversion apply in all areas within 100 miles of the top 60 urban areas. UTC Comments at 28. Such a classification is too broad and would unnecessarily include many rural areas not experiencing spectrum congestion. Indeed, UTC makes no attempt to demonstrate that spectrum congestion is a problem in the various rural areas which would be included in the proposal.

MRFAC urges that only the top-20 metropolitan areas (and a 50-mile radius from each such area) be subject to mandatory conversion. MRFAC believes that these parameters would adequately address the need to provide spectrum relief without placing unnecessary burdens on licensees in uncongested areas.

MRFAC also opposes the proposal by Land Mobile Communications Council ("LMCC") for the designation of markets subject to mandatory conversion. LMCC suggests that the Commission establish mandatory conversion to narrowband or equivalent equipment in "all markets designated as frequency-congested by the frequency advisory committees..." and that licensees in designated markets which fail to convert be relegated to secondary status. LMCC Comments at 14. MRFAC questions whether the Commission may lawfully delegate the authority suggested by LMCC.

The Administrative Procedure Act ("APA") requires regulatory agencies to afford interested parties notice and an opportunity to comment before adopting a substantive rule.<sup>1/</sup> The designation of those markets in which conversion will be mandatory imposes significant economic burdens on existing licensees in the selected markets. They will be required to purchase new equipment or face loss of the protected status conferred by their original licenses (which would in turn render them subject to interference).

Certainly a process that has such a direct economic impact upon a party and threatens its vested rights constitutes a substantive rule. As such, the APA requires that the Commission itself adopt this rule and only after proper notice and opportunity for comment. See also 47 U.S.C. Section 316. Indeed, given that the Commission has already disclaimed mandatory conversion, see Report and Order

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<sup>1/</sup> 5 U.S.C. Section 553; See American Ambulance Serv. v. Sullivan, 911 F.2d 901, 907 (3d Cir. 1990) (substantive rules are those which "grant rights, impose obligations, or produce other significant effects on private interests").

in PR Docket No. 92-235, FCC 95-255, released June 23, 1995 at para. 7, it is even more important that the public be given adequate notice before that position is reversed and the power to impose mandatory conversion is delegated to outside entities.

VI. Consolidation

MRFAC is member of the Coalition of Industrial and Land Transportation Radio Users (the "Coalition") which has submitted a proposed plan for consolidation. As stated in more detail in its reply comments, the Coalition believes that consolidation is unwise in that it creates risks for users of the shared channels and is not even necessary for the introduction of new technologies. Nonetheless, should the Commission persist in pursuing consolidation, the Coalition urges that its plan be adopted as a reasonable compromise on what has been the most controversial re-farming issue.



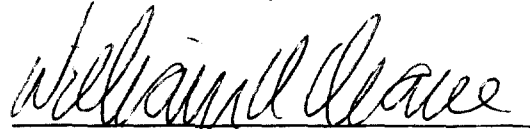
**CONCLUSION**

For the reasons stated herein and in its opening Comments, the Commission should resolve the issues in the Further Notice in the manner suggested by MRFAC.

Respectfully submitted,

MANUFACTURERS RADIO FREQUENCY  
ADVISORY COMMITTEE, INC.

By:



William K. Keane  
Treg T. Tremont

Winston & Strawn  
1400 L Street, N. W.  
Washington, D. C. 20005  
(202) 371-5775

Its Counsel

January 5, 1996